

From: [Elizabeth Babcock - NOAA Federal](#)
To: [Parkin, Richard](#); [Byron, Carrie](#)
Subject: Fwd: Corps Jurisdiction: Follow up on your question today in Bellingham
Date: Monday, November 25, 2013 8:49:44 AM

This is a long exchange, but worth reading. Hugh's response to Matt is very helpful and pertinent to our conversation Friday.

Elizabeth

----- Forwarded message -----

From: **Will Stelle - NOAA Federal** <will.stelle@noaa.gov>
Date: Sat, Nov 23, 2013 at 7:43 AM
Subject: Re: Corps Jurisdiction: Follow up on your question today in Bellingham
To: "Shipman, Hugh (ECY)" <HSHI461@ecy.wa.gov>
Cc: Kim Kratz <Kim.Kratz@noaa.gov>, Matthew Longenbaugh <matthew.longenbaugh@noaa.gov>, Elizabeth Babcock <Elizabeth.Babcock@noaa.gov>, Thomas Sibley <Thomas.Sibley@noaa.gov>, Jeff Fisher <jeff.fisher@noaa.gov>, Donna Darm <Donna.Darm@noaa.gov>, Barry Thom <barry.thom@noaa.gov>, Chris McNulty <chris.mcnulty@noaa.gov>

Hugh: perfect. This is directly relevant to our active discussions with the Corps. I appreciate the assistance and suspect we would like to call on your expertise in the coming weeks as we flesh this topic out further.

Nice to visit with you yesterday.

WS

Sent from my iPhone

On Nov 22, 2013, at 6:07 PM, "Shipman, Hugh (ECY)" <HSHI461@ecy.wa.gov> wrote:

Will,

Here's the correspondence I referred to when we spoke earlier this afternoon at the MRC Conference. It dates to earlier this summer, but clearly addresses the same issue. My response to Matt is long and may not answer your questions, but it's more organized than anything I could have thought up on the spot. This gets more at the implications of the jurisdictional issue than the technical aspects of MHHW and Highest Astronomical Tide (HAT).

I agree that it's worth making sure we all understand the issues clearly before pursuing this too far. It's an important issue and comes up regularly, but I suspect there are some misunderstandings as well and it does no good to have those perpetuated.

I'm cc'ng Matt since he was the one who originally contacted me about this.

I was hoping to stay for your talk today, but some unexpected family issues required me back in Seattle.

hugh

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From: Shipman, Hugh (ECY)
Sent: Wednesday, July 03, 2013 11:37 AM
To: 'Matthew Longenbaugh - NOAA Federal'
Cc: Lynn, Brian (ECY); Stockdale, Erik (ECY); Carman, Randy E (DFW); Baldi, Josh (ECY); Hass, Todd (PSP); Clingman, Tom (ECY); Randall, Loree' (ECY); Renkor, Betty (ECY)
Subject: RE: comments on Shoreline Armoring Vital Sign Gap Analysis

Matt,

Thanks for providing this. I'm copying some other people, because this has ramifications that go way beyond me. Your one-pager is a nice summary of the problem. The following is some additional perspective for everyone, not in any way a critique of what you put together. If this fosters some healthy conversation, all the better – I'm sure something below will provoke someone!

The issue of Corps' jurisdiction comes up regularly and there have always been differing interpretations about what it is based on and whether the Seattle district is consistent with other Corps' locations. Frankly, it's great to see this issue finally getting brought to folks' attention, although resolution probably hinges on a larger, more deliberative, discussion among agencies (including the Corps).

You note that most shoreline armor actions are deliberately placed above MHHW to avoid Corps permits." This is true to a point, but I'd like to offer a slightly more nuanced view. Historically – before state laws on shoreline (SMA and HPA) – this was

definitely true – and we see older projects all over the Sound that were built right down to MHHW, but no farther, in order to avoid the Corps. But the SMA and the HPA process both require structures to be built at OHWM (as the state defines it), which despite frequent confusion, is inevitably farther landward (and relatively similar to your HAT). So most small-scale armoring – ala residential bulkheads – are being built significantly landward of MHHW due to state regulations, not due to fear of Corps jurisdiction. This maybe a nuance, but I think it's an important one, and it gives the state some deserved credit. If Corps jurisdiction were all that was controlling bulkhead locations, we'd still be seeing bulkheads built as they were in the 1960s – right at MHHW.

That does not mean that Corps jurisdiction is irrelevant. First, there are plenty of bigger projects – bank stabilization in historically filled areas where structures have always been much farther waterward (think urban and port shorelines). Second, Corps jurisdiction can become an unintended disincentive for restoration and “soft” options like beach nourishment, which both may involve elements waterward of MHHW, even though the overall project may be seen as positive (since the corresponding “hard” alternative escapes that the more rigorous review).

And third – and coming back to your primary concern – the fact that the Corps does not invoke jurisdiction above MHHW means that much bank stabilization on Puget Sound is simply not receiving NOAA/USFWS review. Which is a good point (and not a new one), although I'm not sure how much that review would change the number or type of bulkheads ultimately built on the Sound, since I think that hinges on whether you guys would be able to provide sufficiently strong substantive basis for pushing back beyond what the state already does. I think there's a myth out there that state and local governments are just letting armoring go in with impunity, which simply isn't the case if you look at 1) the amount of new armoring occurring compared to historic levels, 2) the amount of new armoring compared to the amount of shoreline, or 3) the scrutiny being received by *most* armoring applications.

It doesn't mean we couldn't be doing better, or that really ill-conceived projects still occur (don't get me started on San Juan county). It certainly is appropriate to ask if greater federal jurisdiction/involvement would be helpful.

This issue also has significant ramifications for how Ecology handles it's CWA permitting responsibilities regarding armoring.

Sorry about the long note – the bottom line for me is that more people need to be talking about this and that we should take the time to make sure we understand pretty clearly what the issues are and what measures would actually improve the outcomes we want.

Hugh

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Gravel Beach (<http://gravelbeach.blogspot.com>)

From: Matthew Longenbaugh - NOAA Federal [<mailto:matthew.longenbaugh@noaa.gov>]
Sent: Wednesday, July 03, 2013 10:01 AM
To: Shipman, Hugh (ECY)
Subject: comments on Shoreline Armoring Vital Sign Gap Analysis

Mr Shipman,

I am a NMFS habitat bio working in central Puget Sound. I was reading your gap analysis (June 28-2013) re how to track shoreline armoring and wanted to let you know about an ongoing issue our agency has w Corps re CWA permitting.

In sum, the Corps chooses to limit their jurisdiction for certain permits involving placed "fill" to MHHW, instead of using a higher tidal elev that NMFS believes is correct.

While the Clean Water Act defines the upper tidal limit for permitting as "high tide line," the Corps Seattle District has for yrs interpreted that to mean MHHW.

Our read of the definition in the law is that "high tide line" is extreme predicted high tide (HAT). This elev is also same that NMFS has defined as upper limit of salmon critical habitat.

My agency has raised this issue at policy levels w Corps, which has responded with proposal for multi-yr study.

As you may know, the differences between HAT and MHHW vary from 1.3 to 2.7 feet around the Sound. At Seattle is 1.9 ft.

In effect, most shoreline armor actions are deliberately placed above MHHW to avoid Corps permits. While HPAs are typically triggered, there is no federal review by either Corps or NMFS. Where there is federal review, NMFS can impose site-measures to minimize adverse effects (short and long-term).

See attached summary fyi. I have more background if you are interested.

Matt L [360-753-7761](tel:360-753-7761)